

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3
4 UNITED STATES OF AMERICA,

No. CR-02-0195-FVS

5 Plaintiff,

6
7 ORDER DENYING DEFENDANT'S
SECOND MOTION TO MODIFY
SENTENCE

v.

8 KEITH SHERMAN NEAL,

9 Defendant.

10

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12 **THIS MATTER** came before the Court on Defendant's second motion to
13 modify sentence pursuant to 18 U.S.C. § 3582(c)(2). (ECF No. 57).
14 Assistant United States Attorney Aine Ahmed represents the United
15 States, and Defendant is proceeding pro se.

16 **BACKGROUND**

17 On November 16, 2005, Defendant pleaded guilty pursuant to a plea
18 agreement. (ECF No. 34). Defendant's guideline range, based on a
19 total offense level of 31 and a criminal history category of III, was
20 135 to 168 months. Defendant, however, was sentenced on February 7,
21 2006, to 120 months incarceration, the statutory mandatory minimum.
22 Judgment was entered on February 9, 2006. (ECF No. 42). On December
23 21, 2011, Defendant filed a motion requesting a reduction of sentence
24 pursuant to 18 U.S.C. § 3582(c)(2) based upon the United States
25 Sentencing Commission's Amendment 750 which changed the Drug Quantity
26 Table for offenses involving cocaine base (crack). (ECF No. 44). On

1 January 18, 2012, the Court denied Defendant's motion to modify
2 sentence pursuant to 18 U.S.C. § 3582(c)(2).¹ (ECF No. 45). On
3 February 9, 2012, Defendant filed a notice of appeal. (ECF No. 47).
4 The appeal was dismissed as untimely. On August 1, 2012, Defendant
5 filed the instant motion to modify his sentence pursuant to 18 U.S.C.
6 § 3582(c)(2). (ECF No. 57). Defendant subsequently filed two motions
7 seeking an order directing the Government to respond to Defendant's
8 motion and for an expedited disposition of his motion. (ECF No. 58 &
9 59).

10 **DISCUSSION**

11 Defendant requests a reduction of sentence pursuant to 18 U.S.C.
12 § 3582(c)(2) based upon a recent Supreme Court decision, *Dorsey v.*
13 *United States*, 132 S.Ct. 2321 (June 21, 2012).

14 18 U.S.C. § 3582(c)(2), the statutory basis for Defendant's
15 motion, provides as follows:

16 [I]n the case of a defendant who has been sentenced to a term of
17 imprisonment based on a sentencing range that has subsequently
18 been lowered by the Sentencing Commission pursuant to 28 U.S.C.
19 994(o), upon motion of the defendant or the Director of the
20 Bureau of Prisons, or on its own motion, the court may reduce the
21 term of imprisonment, after considering the factors set forth in
22 section 3553(a) to the extent that they are applicable, if such a
23 reduction is consistent with applicable policy statements issued
24 by the Sentencing Commission.

25 The language of Section 3582(c)(2) provides the Court with
26 authorization to reduce a sentence where the applicable "sentencing
range" has been subsequently lowered. Given that Defendant was

27 ¹The Court concluded that a reduction of Defendant's
28 sentence was not authorized under § 3582(c)(2) because Defendant
29 is serving a statutory mandatory minimum sentence. (ECF No. 45).

1 sentenced pursuant to a statute, and not under the United States
2 Sentencing Guidelines, there was no "sentencing range" which could be
3 subsequently lowered by the Sentencing Commission. Consequently,
4 Section 3582(c)(2) does not confer jurisdiction on this Court to
5 resentence Defendant. *U.S. v. Jackson*, 577 F.3d 1032, 1035-1036 (9th
6 Cir. 2009) (a defendant sentenced pursuant to a mandatory minimum, and
7 not a sentencing guideline range, is ineligible for a sentence
8 reduction under § 3582(c)(2)). This is the identical determination
9 the Court made when it denied Defendant's initial motion to modify
10 sentence pursuant to 18 U.S.C. § 3582(c)(2). (ECF No. 45).

11 The Supreme Court in *Dorsey*, the case which Defendant identifies
12 as the basis of the instant motion, held that the more lenient
13 penalties of the Fair Sentencing Act of 2010, which reduced the crack-
14 to-powder cocaine disparity from 100-to-1 to 18-to-1,² applied to
15 offenders who committed a crack cocaine crime before the effective
16 date of the Act, August 3, 2010, but who were sentenced after that
17 date. Defendant was sentenced on February 7, 2006, well before the
18 effective date of the Fair Sentencing Act of 2010. Accordingly,
19 *Dorsey* does not apply to Defendant.

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22 ²In 2010, Congress enacted the Fair Sentencing Act into law.
23 The Act increased the drug amounts triggering mandatory minimums
24 for crack cocaine trafficking offenses. The change had the
25 effect of lowering the 100-to-1 crack-to-powder ratio to 18-to-1.
26 The Fair Sentencing Act took effect on August 3, 2010. The
Commission promulgated conforming emergency Guidelines amendments
that became effective on November 1, 2010. 75 Fed.Reg. 66188
(2010). A permanent version of those Guidelines amendments took
effect on November 1, 2011. *Dorsey*, 132 S.Ct. at 2329.

RULING

Defendant is serving a statutory mandatory minimum sentence. A reduction of Defendant's sentence is thus not authorized under Section 3582(c)(2). Moreover, the *Dorsey* decision, the basis for Defendant's motion, is inapplicable to Defendant because it addresses only those crack cocaine offenders who were sentenced after August 3, 2010. Accordingly, Defendant's second motion to modify sentence pursuant to 18 U.S.C. § 3582(c)(2) (**ECF No. 57**) is **DENIED**. Defendant's motions seeking a response from the Government and for expedited disposition (**ECF No. 58 & 59**) are **DENIED as moot**.

IT IS SO ORDERED. The District Executive shall forward copies of this order to Defendant and counsel for the Government.

DATED this 29th day of August, 2012.

S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge